No. 12579

In the United States Court of Appeals for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

FRANK X. GRUBL, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA CENTRAL DIVISION

BRIEF FOR APPELLANT

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INDEX

TABLE OF AUTHORITIES

899248—50

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STATEMENT OF JURISDICTION

The United States of America, plaintiff below, appeals from a final judgment of the United States District Court for the Southern District of California, Central Division, entered on April 20, 1950, in which a judgment was entered on behalf of the defendant-appellee herein on the ground that the "overcharges complained of are inconsequential in amount" (R. 13). Action was commenced pursuant to Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 901, et seq.) and Sections 205 and 206 (b) of the Housing and Rent Act of 1947, as amended (50 U. S. C. A. 1881, et seq.) (hereinafter referred to as the Act of 1942 and the Act of 1947, respectively), for an injunction, restitution and treble damages because of overcharges of rent collected contrary to the provisions of said Acts (R. 2).

Notice of Appeal was filed on June 2, 1950 (R. 14). Jurisdiction of this Court is invoked pursuant to Section 1291 of the Judicial Code (28 U. S. C. A. 1291).

STATEMENT OF THE CASE

On August 5, 1949, United States of America filed suit against the defendant for an injunction restraining violations of the Act of 1947 and for restitution pursuant to the Act of 1942 and for restitution and treble damages in accordance with Sections 205 and 206 (b) of the Act of 1947[1] (R. 2). In its complaint, the Government charged that the defendant was the landlord of premises located at 1130 Alpine Street, Los Angeles, California, located within the Los Angeles Defense-Rental Area and subject to the Federal rent control laws (Par. 3, R. 2). The Government further charged that the defendant received rents in excess of the legally established maximum rents as fully set forth in Schedule A of said Complaint (Par. 5, R. 3).[2] The plaintiff then prayed for a restraining order, restitution and damages (R. 4–6).

In his Answer, the defendant denied generally the material allegations of the Complaint (R. 8) and pleaded as an affirmative defense the fact that the excess amounts collected were collected pursuant to an independent contract and not as rent (R. 8). Defendant alleged that he had sold the property; that the tenants had been given notice to vacate; and that

[1] Sections 205 and 206 of the Act of 1947 are set forth in full, *infra*, pp. 12, 13.

[2] Schedule A is fully set forth in the record showing the number of the unit, the name of the tenant, the period of the overcharges, the maximum rent and the total amount of the overcharge (R. 7).

under the circumstances the tenants agreed to pay $2.00 per room in addition to their legal rent for defraying expenses to retain their tenancies for such period as the new owners might elect to give them (R. 9). As a second and separate affirmative defense, the defendant pleaded "a full and complete release of any claim against the said defendant" signed by the tenants (R. 10).

The case was tried in the Court below without a jury, at the conclusion of which the Court entered Findings of Fact and Conclusions of Law (R. 10). In its Findings of Fact, the Court held that it had jurisdiction of the subject matter; that the defendant was a landlord of the accommodations in question, and subject to the Federal Rent Control Acts as controlled housing accommodations; that the allegations of Par. V of the Complaint are true, viz.: that defendant received from persons for the use and occupancy of said accommodations rents in excess of the maximum rents established pursuant to said Acts, as shown by Schedule A attached to the Complaint (Par. 3 of Findings, R. 11, Par. 5 of Complaint, R. 3); that the amounts set forth in said Schedule A "are inconsequential" (Par. 3 of Findings, R. 11); that the allegations contained in Par. VI of the Complaint are not true, viz.: that in the judgment of the Housing Expediter defendant has engaged in violations of the Act (Par. 4, R. 11); and last, that "equity may best be served by denying the prayer of plaintiff's Complaint" (Par. 5, R. 11). In its Conclusions of Law, the Court below concluded that "equity may best be served by denying the prayer of plaintiff's Complaint and ordering

judgment for defendant, Frank X. Grubl" (R. 12). Based upon these Findings and Conclusions, the Court entered a judgment holding the overcharges to be inconsequential and decreeing that equity could best be served by finding for the defendant, Frank X. Grubl (R. 12). From that judgment, plaintiff appeals (R. 14).

ARGUMENT

I

The Court below erred in denying relief to the plaintiff on the ground that the overcharges were inconsequential and in failing to grant statutory damages, an injunction and restitution for violations of the Acts of 1942 and 1947

In Par. III of its Findings the Court below found that the allegations contained in Par. V of the Complaint are true. This paragraph contained the allegation that defendant received from persons for the use and occupancy of housing accommodations rents in excess of the maximum rents established pursuant to said Acts as shown by Schedule A attached (R. 11).

Having found that defendant had received rents in excess of the maximum rents, it was incumbent upon the Court to grant judgment for an amount no less than single the amount of overcharges not barred by the statute of limitations under Sec. 205 of the 1947 Act, and if the overcharges were wilful to grant treble damages under said Act (*Porter* v. *Gray,* 158 F. 2d 442 (C. A. 9); *Fleming* v. *Hanscom,* 162 F. 2d 164 (C. A. 9); *Woods* v. *Haydell,* 178 F. 2d 914 (C. A. 5); *Porter* v. *Bledsoe,* 159 F. 2d 495 (C. A. 4); *Small* v. *Schultz,* 173 F. 2d 940, 943 (C. A. 7)). So, too, restitution should have been granted in

the exercise of the Court's sound discretion for that period of violation barred by the statute of violations (*Woods* v. *McCord,* 175 F. 2d 919 (C. A. 9); *Woods* v. *Witzke,* 174 F. 2d 855 (C. A. 6)).

The Court below, however, denied both statutory damages and restitution solely upon the ground that the overcharges were inconsequential. But this was an erroneous construction of the law since the doctrine *de minimis non curat lex* does not apply to actions brought by the United States for vindicating the public interest and preventing inflation. The doctrine *de minimis* particularly has no application to the suit brought by the Government in this case, first, because there was nothing *in fact de minimis* about these overcharges and, second, because it would defeat the Congressional purpose of curbing inflation and rental overcharges.

1. As to the first, the Complaint clearly shows that the amount involved in this action was $1,031.25, which the Court found the defendant to have collected in excess of the legally established maximum rents (Par. 3—R. 11). Schedule A in great detail sets out the itemized overcharges totalling $1,031.25 (R. 7). These overcharges range in amounts from $110.00 overcharge to Louise M. Johnson to a one-month overcharge of $4.25 to Nicolas Ramirez. An analysis of Schedule A shows that there were 24 overcharges. Of these 8 of them are in excess of $50.00; 9 of them are in excess of $25.00, for a total of illegal rent collections in excess of $1,000. None of these overcharges is less than 20% of the maximum rent per month and some of them run more

than 50%. An overcharge of from 20% to 50% in excess rent for people living on the economic level of the people listed in Schedule A represents a very substantial item in living costs. It is true that taken by itself, an increase of $2.00 per month per tenant may appear to be "inconsequential." But the policy of the Federal Government as expressed in the Act of Congress is to protect all levels of tenants. It is common knowledge that those in the lowest rent paying brackets are the least able to bargain for the scarce housing that exists today and are more easily the prey for unscrupulous landlords.

In order to uphold the conclusion of the Court below that these overcharges were *de minimis* one would necessarily remove from the protection of the Act persons at this economic level. Yet the contrary intention was explicitly expressed by Congress. In Section 205 of the Act of 1947, Congress provided that wherever the overcharges were less than $50.00, the Court could award damages of $50.00 or three times the amount of the overcharges, *"whichever was greater."* [Emphasis added.] (See, *infra*, p. 12.) It was, therefore, very clearly within the contemplation of Congress that overcharges of the amounts which the Court below termed "inconsequential" were to be prevented and redressed.

2. Secondly, the doctrine *de minimis* cannot as a matter of law be applied to actions where the Housing Expediter in the name of the United States seeks to enforce compliance with the Act. (*Porter* v. *Rushing,* 157 F. 2d 263 (C. A. 8); *Porter* v. *McRae,* 155 F. 2d 213 (C. A. 10); *Brown* v. *Mars,* 135 F. 2d 843,

849 (footnote 3) (C. A. 8th), cert. denied, *sub nomine Mars* v. *Bowles,* 320 U. S. 798; *Bowles* v. *Ormesher,* 65 F. Supp. 791 (D. C. Neb.); *Creedon* v. *Stratton,* 74 F. Supp. 170, 180 (D. C. Neb.).)

In the *Rushing* case, *supra,* the District Court in its opinion (65 F. Supp. 759) pointed out that there were two violations; one involving $12.00 and the second, involving $2.00. The Court without a hearing on the merits dismissed the complaint stating "the maximum *de minimis non curat lex* * * * require(s) that the complaint be dismissed" (p. 760). In reversing the District Court, and returning the case "for trial on the merits," the Court of Appeals said:

> "* * * The judgment was entered on the ground that the maxim de minimis non curat lex and the fair and honest administration of the law required the dismissal. Since the courts are not vested with discretion either to deny enforcement of or to withhold the statutory remedies provided by Congress, *Lenroot* v. *Interstate Bakeries Corp.,* 8 Cir., 146 F. 2d 325; *Porter* v. *McRae,* 10 Cir., 155 F. 2d 213, the case should not have been dismissed. * * *"

Cf. *Bowles* v. *American Stores,* 139 F. 2d 377 (App. D. C.) where a single sale at only a few cents above the legal maximum was involved.

Judge Delehant had occasion to point out how disastrous the application of the *de minimis* theory would be upon price and rent control in *Bowles* v. *Ormesher, supra.* In that case, he forcefully said (65 F. Supp. at p. 793):

Finally, it is said that the facts alleged are trifles; and "de minimis non curat lex." The point is devoid of merit. The violations charged are trifles only in the sense that the impairment of a building's joists by one day's toil of a single termite is trifling. The cumulative burrowings of that insect and his brethren over a measurable period of time destroy the entire structure. Isolated, the alleged evasion of the Price Control Act by the defendant, however censurable in its implications, would, indeed, be trivial. But it may not be appraised in isolation. It and an infinite number of comparable transgressions, continued, enlarged, and practiced over a substantial territorial area, must inevitably result in ruinous inflation and economic disorder. And there is nothing minimal either in that consequence or in the smallest act of unreckoning selfishness that contributes to it even remotely. *Qui patriae pericula plorat, de minimis non clamat.*

3. It is true that in addition to finding that defendant received rental overcharges as set out in Schedule A (Finding III, R. 11), the Court below also found that Allegation VI of the Complaint was not true viz: "In the judgment of the Housing Expediter the defendant has engaged or is about to engage in acts and practices which constitute and will constitute violations of * * * said Acts * * *" (Finding VI, R. 4).

At most Finding VI is no more than a conclusion of law wholly unsupported in the record. Indeed, as we have seen, the Court's finding of Fact III that violation was present to the extent set forth in Sched-

ule A is squarely opposed to the conclusion of law set forth in Finding IV.

Moreover, if we consider Finding IV literally, it declares that it is not true that in the judgment of the Housing Expediter the defendant has engaged in violation. But the judgment of the Housing Expediter must have been that overcharges were received by defendant as shown by the filing of suit by him. That there was ample basis for the Expediter's judgment is found in Fact Finding III (R. 11) that defendant received "rents in excess of the maximum rents." For these reasons, Finding IV (R. 11) must be set aside as being manifestly erroneous.

4. Defendant in his answer also relied upon the voluntary agreement of the tenants to pay the overcharges.[3] Obviously, this defense was also lacking in merit since agreements to pay more than the rental allowed by law are void as against public policy.

The Courts have repeatedly held that where a statutory proscription is placed upon one party, he may not plead the collusion of a third party in

[3] This defense, of course, is contrary to the express provisions of Sec. 4 (a) of the 1942 Act and Sec. 206 (a) of the 1947 Act (*Infra*, pp. 12, 13) as well as Sec. 2 of the Rent Regulation for Rooming Houses (12 F. R. 4302; 13 F. R. 1873) to which these premises were subject. Section 2 of that Regulation (See, *infra*, p. 14) provides in part that "regardless of any contract * * * no person shall demand or receive any rent * * * higher than the maximum rents provided by this Regulation * * *." This Court has previously pointed out the lack of the bargaining position which a purchaser or a tenant has in a war affected economy. (*Martini et al.* v. *Porter*, 157 F. 2d 35 (C. A. 9), cert. denied 330 U. S. 848; see too, *Woods* v. *Schmid*, 164 F. 2d 981 (C. A. 5); *Woods* v. *Dodge*, 170 F. 2d 761 (C. A. 1)).

justification for violation of the statutory edict (*Popplewell* v. *Stevenson,* 176 F. 2d 362 (C. A. 10); *N. L. R. B.* v. *American Potash and Chemical Corp.,* 118 F. 2d 630, 631 (C. A. 9); *Ebeling* v. *Woods,* 175 F. 2d 242 (C. A. 8)). In rejecting the argument that the tenant was in *pari delicto* with his landlord as a defense to an action for restitution under Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 925 (a)), the Court in the *Ebeling* case said (p. 245):

> Appellant's final contention is that the court should have denied restitution under the doctrine of pari delicto. The argument is that it was as wrong for the tenant to pay the $500 bonus as it was for the landlord to accept it, and that the Administrator therefore ought not to be permitted to seek a restitution for the tenant's benefit. But this ignores both the concept underlying the Act and its plain provisions. Under 50 U. S. C. A. Appendix, § 904 (a), the duty to avoid overcharges under the Act is the responsibility of the landlord and not the tenant. The landlord alone, because of his superior position generally in the housing-shortage situation was made the offender under the Act. Congress regarded a tenant, who paid more than the authorized rental for a housing accommodation, as having committed no wrong.

See, also, *Porter* v. *Crawford and Doherty Foundry Co.,* 154 F. 2d 431, 433 (C. A. 9).

On the basis of the foregoing authorities and the necessity that the intent of the Congress be enforced, it is respectfully submitted that the Court below erred

in denying relief to the Government and in finding for the defendant on the ground that the transgressions were "inconsequential".

CONCLUSION

It is respectfully submitted that the Court below erred in failing to enter judgment for the plaintiff and that the judgment below be reversed with directions to enter a judgment as prayed in the Complaint.

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APPENDIX

(1) Emergency Price Control Act of 1942, as amended (50 U. S. C. A. 901, et seq.):

PROHIBITIONS

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(2) Housing and Rent Act of 1947 (50 U. S. C. A. 1881, et seq.):

RECOVERY OF DAMAGES BY TENANTS

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever

in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions agains the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jursidiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

SEC. 206 (b). Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial

court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(3) Rent Regulation for Rooming Houses (12 F. R. 4302; 13 F. R. 1873):

SEC. 2. *Prohibition*—(a) *Prohibition against higher than maximum rents.* Regardless of any contract, agreement, lease or other obligation heretofore or hereafter entered into, no person shall offer, demand, or receive any rent for or in connection with the use or occupancy on and after July 1, 1947, of any room subject to this regulation, within the defense-rental area, higher than the maximum rents provided by this regulation; and no person shall solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.

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